

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Broadcast Localism)

MB Docket No. 04-233

To: The Commission

COMMENTS OF DESERT TELEVISION, LLC

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November 1, 2004

SUMMARY

Desert Television LLC, licensee of Class A television station KPSP-LP, Cathedral City/Palms Springs, California, appreciates the opportunity to provide its comments in response to the Commission's *Notice of Inquiry* in the above-referenced proceeding. In these comments, we demonstrate that low power television stations, such as KPSP, make significant contributions to the interests and needs of their communities of license. We also identify several regulatory changes that would enhance the ability of local broadcast stations – particularly low power stations – in the Palm Springs market to fully serve the interests and needs of local viewers.

Among other things, the Commission should encourage Congress to expand must carry rights for certain low power television stations. Currently in Palm Springs, four low power Class A and three TV translator stations are network affiliates of the major national and Spanish-language networks. Because these stations do not have must carry rights, they are required to pay hefty fees to secure cable carriage. These fees take away funds the Class A stations could use to further the goals of localism and the availability of diverse programming frequently offered by TV translators. In order to permit these stations to fully devote their resources to serving their local communities, the Commission should report to Congress on the role that low power stations play in many local markets and propose that Congress modify the must carry statutes to give additional must carry rights to network-affiliated low power stations, particularly in such places as Palm Springs where low power stations are the true, local television stations.

The Commission should also revisit and update which stations are “significantly viewed” stations for purposes of cable carriage. Under the existing classification scheme,

which was adopted in 1972 and has not been meaningfully revised or revisited since, all of the Los Angeles stations are classified as “significantly viewed” in the Palm Springs market. As a result, cable operators serving Palm Springs are permitted to carry the Los Angeles network-affiliated stations even if there is a network-affiliated station licensed to Palm Springs. This duplicative programming takes viewers away from the local Palm Springs stations, diminishes the amount of advertising revenue received by these stations, and ultimately limits the ability of these stations to air programming that is responsive to the interests and needs of the Palm Springs community. Accordingly, the Commission should revisit and, where appropriate, revise the list of “significantly viewed” stations in markets, particularly like Palm Springs, and consider revising the network and syndicated exclusivity exemptions for “significantly viewed” stations.

Finally, Congress is considering the adoption of the Satellite Home Viewer Extension and Reauthorization Act of 2004. Under the current bill, satellite operators would be permitted to deliver distant signals to subscribers in a community, as long as those signals are classified as “significantly viewed.” All stations on the 1972 list would be grandfathered for purposes of satellite carriage. The enactment of this bill would further harm broadcast stations in the Palm Springs market because satellite operators could deliver the Los Angeles stations in Palm Springs, further eroding the viewership and advertising revenue of the Palm Springs Class A stations and undermining the incentives that the cable operators have to carry the local low power television stations under fair and reasonable terms. The Commission should minimize the impact of this legislation by modifying its satellite network non-duplication and syndicated exclusivity rules to protect the low power stations in markets like Palm Springs.

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Desert Television, LLC, licensee of Class A Television Station KPSP-LP, Cathedral City/Palm Springs, California hereby submits these comments in response to the Commission's *Notice of Inquiry* in the above-referenced proceeding.¹ Station KPSP is the CBS affiliate for the Palm Spring Designated Market Area ("DMA"). Desert Television also operates through a local marketing agreement TV translator station KYAV-LP, Palm Springs, California, the local affiliate of the national Spanish-language network Azteca.

Desert Television submits these comments to highlight the contribution that KPSP and other low power stations make toward furthering the Commission's goals of localism and to bring to the Commission's attention certain hurdles that low power stations face, particularly in the Palm Springs market, in their ability to fully serve the interests and needs of their communities of license.

¹ *In re Broadcast Localism*, Notice of Inquiry, MB Docket No. 04-233 (rel. July 1, 2004) ("*Notice of Inquiry*").

I. **DESERT TELEVISION MAKES SIGNIFICANT CONTRIBUTIONS TO LOCALISM.**

KPSP, the CBS affiliate for the Palm Springs market, serves the local Cathedral City/Palm Springs market by offering local news coverage and other locally originated programming, providing financial support to local charities, sponsoring local cultural events, serving as a leader of the California Broadcasters Association, and supporting our local National Guard units.

Specifically, KPSP provides four hours of live local news programming Monday through Friday and another 90 minutes every Saturday and Sunday. Every week, the KPSP local news features a "Charity Spotlight," telling the story of one local charity and how it helps the local community. KPSP also features a weekly segment titled "Your Stories" that is part of our everyday slogan, "Your Stories, Your Station." The series, which has been airing for the past two years, features a weekly story about a local person selected from the telephone book. It is a great way for members of the community to learn more about their neighbors. In addition, KPSP regularly airs public service announcements.

KPSP also provides an incredible amount of coverage for our 400+ local charities that serve the Palm Springs market. KPSP has put together an annual event titled The Charity Challenge, which is a two-month program each year designed to spread the message and raise awareness about local charities. The program includes a month long blood drive that, in 2004, produced close to 700 pints of blood for the Community Blood Bank. In its first two years, over 80 different local charities have participated and received cash and donations that total over \$160,000. The Charity Challenge is now

approaching its third year and has become a 501(c)(3) organization so that it can better handle the mission of its Charity Challenge program.

In a full-page newspaper advertisement on June 8, 2003 – that the local charities took out without the knowledge of KPSP – here are some of the comments from three of the 24 charities that sponsored this advertisement:

“If charity starts at home, CBS 2 is home to us! Thank you for supporting the many worthy causes in our beautiful desert.” *The Desert Women’s Council – City of Hope*

“Definition of Civic... ‘pertaining to, or belonging to a city.’ CBS 2 belongs to the Coachella Valley.” *Desert Paws*

“CBS 2, great idea – giving local charities the chance to raise funds and also have fun – and to have CBS 2 air our request to recruit more volunteers for our program. We can’t wait for the 2nd annual Charity Challenge.” *Big Brothers and Sisters of the Desert*²

Further, in 2003 and 2004, KPSP has provided extensive coverage of local and national political debates. On October 13, 2004, KPSP televised the only debate featuring two candidates in one of the closest political contests in the Palm Springs market this election season – the California Assembly seat for the 80th District. Through its affiliation with the CBS Network, KPSP also televised all of the presidential debates as well as the vice presidential debate.

One of the biggest projects we have launched recently is our National Guard Armory adoption program. Desert Television was the first company in the country to spearhead this program which has become a national program to help clean up and refurbish the National Guard Armories across the country. The Armories were all

² Locally, KPSP is also referred to as “CBS 2.”

constructed in the 1950's, and in the past 20 years, have not been properly maintained and have not had the budget necessary to keep them up to date. KPSP adopted the National Guard Armory of Indio – located within the Palm Springs DMA, which has become the role model for other armories. KPSP was able to get our community partners to pitch in and donate approximately \$300,000 in work to fix up the National Guard Armory. In July 2004, Three Star General Blum, the man in charge of all the National Guard Armories, personally came to the armory in Indio and presented KPSP with one of its highest commendations for community effort. Bill Evans, the Vice President/General Manager of KPSP and President-Elect of the California Broadcasters Association, has encouraged other television and radio stations to adopt armories in their communities and help get them ready for the return of our men and women in the armed services who are currently serving overseas.

Desert Television also financially supports and contributes to a number of local cultural programs, including the Palm Springs International Film Festival, the Speaker Series of Indian Wells, and so many other worthy local events.

These are just a few of the ways that Desert Television has enriched the Palm Springs market with its local news coverage, spotlight on community members, and contribution to and on-air support for local charities and cultural events.

II. **LOW POWER STATIONS MAKE PALM SPRINGS A VIBRANT TELEVISION MARKET, BUT FACE CONSTRAINTS IN THEIR ABILITY TO SERVE THE COMMUNITY.**

The authorization of low power and Class A stations has transformed broadcast markets and enhanced localism throughout the country. For instance, today, the Palm Springs market is a vibrant local television market primarily composed of low power

stations. Only two full power commercial stations serve the Palm Springs market: KESQ-TV, the local ABC affiliate; and KMIR-TV, the NBC affiliate. For many years, these two full power stations were the only two stations in the market.

Since the late 1990s, four Class A television and three TV translator stations have begun to serve the Palm Springs community as local affiliates of major commercial and Spanish-language television networks.³ As described above with respect to KPSP, these Class A stations serve the local interests of the Palm Springs community through local news coverage, other locally originated programming, and involvement in the community. However, these stations are faced with three hurdles in their ability to fulfill the Commission's goals of localism: (1) because they are low power stations, they do not enjoy must carry, network non-duplication and syndicated exclusivity rights available to full power stations; (2) because Los Angeles stations are designated as "significantly viewed", cable operators can carry the Los Angeles network-affiliated stations and have little incentive to carry the local low power television stations under fair and reasonable terms; and (3) legislation pending in Congress would allow satellite carriers to import the Los Angeles stations into the Palm Springs market, again resulting in duplicative programming in the Palm Springs market and undermining the ability of the local stations to secure advertising to support their local operations.

³ These stations include: KDFX-CA, the Class A affiliate of Fox; KPSP-LP, the Class A affiliate of CBS; KVER-CA, the Class A affiliate of Univision; KDPX-LP, the Class A affiliate of the PAX network; KUNA-LP, the TV translator affiliate of Telemundo; KPSE-LP, the TV translator affiliate of UPN; KYAV-LP, the TV translator affiliate of Azteca.

Likewise, the Commission should review the diverse programming that TV translator stations offer to many communities, particularly programming designed to serve the interests and needs of viewers that are typically underserved in a community. For instance, two of the TV translator stations in Palm Springs rebroadcast major Spanish language networks. As with low power and Class A stations, the lack of must carry rights reduces the availability of these stations to significant portions of the population. Moreover, the fact that these stations are forced to pay fees for cable carriage could jeopardize the licensees' ability to continue offering these diverse services.

These hurdles are even more profound when one considers the high rate of cable penetration in the Palm Springs market. According to data from 2003-2004, the Palm Springs DMA has a cable penetration rate of 87% -- the highest in the country.⁴

The Commission's current rules and policies do not appropriately reflect or adequately protect the important contributions that low power and TV translator stations make toward serving the unique local interests of their communities and offering diverse programming services in many television markets, like Palm Springs. The Commission should use this proceeding to take steps necessary to recognize the role of low power stations and TV translator stations today and level the playing field for these stations.

III. LOW POWER AND TV TRANSLATOR STATIONS SHOULD HAVE ADDITIONAL MUST CARRY RIGHTS.

Low power television stations, including Class A television stations with primary station status, have very limited must carry rights.⁵ In Palm Springs, where there are six

⁴ See Broadcasting-Cable Yearbook 2003-04 at C-53.

⁵ See 47 C.F.R. 76.56(c)(3) ("If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b)(1) and (b)(2) of this section, a cable

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network-affiliated stations that provide a mix of national and local programming, the four network-affiliated Class A television stations and the three network-affiliated translators have to pay large cable carriage fees. These fees pose an economic hardship on the stations and limit the ability of the Class A stations to pay for local programming and make other contributions to the local community and threaten the ability of TV translator stations to offer unique programming that enhances the diversity of many broadcast markets.

When Congress adopted the must carry requirements set forth in Section 614 and 615 of the Cable Television Consumer Protection and Competition Act of 1992,⁶ low power television was in its relative infancy and neither Congress nor the Commission fully recognized the significant role those stations could play in markets like Palm Springs toward serving the local community with the type of programming offered by KPSP. This proceeding presents the opportunity for the Commission to compile a record of the unique contributions that low power stations make in certain markets, such as Palm Springs, to enhancing localism and diversity, to provide Congress with that information, and to seek legislation that would give additional must carry rights to low power stations in these circumstances. In this regard, Desert Television offers two proposals.

First, the Commission could propose that Congress give low power stations must carry rights once they make the transition to digital broadcasting. This policy would

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operator of a system with 35 or fewer usable activated channels . . . shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power station.”); *see also id.* § 76.55 (defining “qualified low power station”).

⁶ *See* 47 U.S.C. §§ 534-535.

promote the goals set forth in the *Notice of Inquiry* by protecting low power television stations that serve local communities with digital broadcasts of local weather, news, human interest and entertainment programming. In addition, these must carry rights also would promote the goals set forth in the Communications Act and adopted by the Commission with respect to the digital transition. Such rules would further the recent Report and Order on the low power transition to digital broadcasting,⁷ give low power stations incentives to hasten their transition to digital broadcasting, and potentially free up returned spectrum for other purposes.

Alternatively, the Commission could propose that Congress amend Section 614 of the Communications Act to require carriage of additional network-affiliated low power stations if there are not enough local full power commercial television stations to fill the channel set aside requirements. Currently, under Section 614,⁸ a cable system with more than 12 channels is required to carry local commercial stations up to one-third of the aggregate number of usable channels. Thus, if the cable system offered 99 usable channels, it would be required to carry up to 33 local commercial stations. However, if there are not enough full power commercial stations to fill the channel set aside requirement, Section 614(c)(1) only requires the cable operator to carry at most two low power television stations. Thus, in a market like Palm Springs, the cable operator would only have to carry four commercial stations – the two full power commercial stations

⁷ See *In re Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, MB Docket No. 03-185, FCC 04-220 (rel. Sept. 30, 2004).

⁸ 47 U.S.C. § 534; see also 47 C.F.R. 76.56 (implementing the statutory must carry requirements).

licensed to the Palm Springs market and two additional low power stations – even if the cable system had sufficient channel capacity to carry all of the local network affiliates if they were full power stations.

By urging Congress to grant low power stations must carry rights, the Commission would recognize and encourage the contribution that low power television stations make in many markets like Palms Springs by serving as local affiliates of national networks, providing a diverse mix of programming in markets with few full power stations, and providing programming that serves the interests and needs of the local community. These must carry rights also would protect low power stations from having to pay expensive cable carriage fees in order to reach local audiences in markets such as Palm Springs, where the vast majority of viewers subscribe to a multichannel video programming service. In turn, these stations would have more funds to invest in locally originated programming that serves the interests and needs of their communities of license.

IV. **THE COMMISSION SHOULD UPDATE ITS CLASSIFICATION OF “SIGNIFICANTLY VIEWED” STATIONS IN THE PALM SPRINGS MARKET.**

The Commission’s current list of which stations are “significantly viewed” in the Palm Springs market has not been updated since 1972 and does not adequately reflect the market today. As presently written, the current list hinders the ability of low power television stations in the Palm Springs market from serving the local interests of the community, without conferring any significant benefits on the commercial stations in Los Angeles or the local cable companies, which are required to carry them.

A. The “Significantly Viewed” Classifications Are Outdated for the Palm Springs Market.

In 1972, the Commission created a list of “significantly viewed” television stations for purposes of the cable television regulations.⁹ The “significantly viewed” rule was an effort to codify the out of market stations that non-cable households could receive off the air.

As part of the significantly viewed classifications, the Commission divided Riverside County into three zones: Riverside West, Central, and East. The Palm Springs market is part of Riverside Central.¹⁰ When the Commission issued its list of “significantly viewed” stations in 1972, there were only two local stations on the air in Palm Springs – KMIR and KESQ. The Commission classified the seven Los Angeles stations as “significantly viewed” in Riverside Central.¹¹ As a result of these designations of the Los Angeles stations, cable operators serving the Palm Springs market have been required to carry the Los Angeles network affiliates, including programming that duplicates the programming aired on KMIR and KESQ.¹²

⁹ *In re Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order, 36 F.C.C.2d 326, 383-84 (1972) (Appendix A).

¹⁰ *See In re Desert Empire Television Corporation and Gulf-California Broadcast Company, Joint Request of Palm Springs Stations and Cable System Parties for Approval of Settlement Agreement and for Associated Relief*, Memorandum Opinion and Order, 10 FCC Rcd. 7114, 7114 ¶ 4 (1995).

¹¹ *Id.* at 7114-15 ¶ 5.

¹² If a station is designated as “significantly viewed” in a particular market, the cable operator may carry that station on its cable system and need not delete the duplicate network or syndicated programming of the “significantly viewed” station, even if there now exists a local network affiliate that carries the same programming. *See* 47 C.F.R. §§ 76.54, 76.93(f), 76.106. In other words, the local station cannot protect its rights against duplicative network or syndicated programming of “significantly viewed” stations.

Despite the Commission's "significantly viewed" designations from 1972, extensive Nielsen ratings research shows that the Los Angeles stations are not significantly viewed in Palm Springs by non-cable households. The Los Angeles stations cannot be seen with an indoor or outdoor antenna: these stations are located on the other side of the San Bernardino Mountains. Thus, the 1972 classifications do not adequately reflect the Palm Springs market and should be updated accordingly.

B. The "Significantly Viewed" Classifications Cause Economic Harm to Both Full and Low Power Stations in the Palm Springs Market.

After years of litigation before the Commission regarding the "significantly viewed" exception to the network and syndicated exclusivity rules with regard to the Palm Springs market, in 1995, KMIR and KESQ entered a long-term agreement with the Los Angeles television stations and the local cable operators.¹³ Under that agreement, KMIR and KESQ receive very limited protection from Los Angeles duplicate programming, as long as the local stations schedule their programming at exactly the same time as the Los Angeles stations. The cable operators and low power network affiliates in Palm Springs have a similar carriage arrangement. However, low power stations are required to pay for their carriage on cable systems that serve the Palm Springs community and to prevent the carriage of duplicative programming from network-affiliated stations in Los Angeles. The current agreements expire on December 31, 2005. Even with these agreements in place, however, the carriage of the Los Angeles

¹³ See *In re Desert Empire Television Corporation and Gulf-California Broadcast Company, Joint Request of Palm Springs Stations and Cable System Parties for Approval of Settlement Agreement and for Associated Relief*, Memorandum Opinion and Order, 10 FCC Rcd. 7114, 7115-16 ¶¶ 8-15.

network-affiliated stations erodes the audience and advertising revenue of the Palm Springs stations. Moreover, the Los Angeles stations do not serve the local needs and interests of the Palm Springs community.¹⁴

This proceeding gives the Commission an opportunity to revisit the list of “significantly viewed” stations and the cable network non-duplication and syndicated programming exemptions for such stations. The classifications should be revised to protect full and low power stations in markets like Palm Springs from cable carriage of out-of-market duplicative programming.

V. **THE COMMISSION SHOULD AMEND THE NETWORK NON-DUPPLICATION AND SYNDICATED EXCLUSIVITY RULES IF CONGRESS PASSES THE PENDING SATELLITE LEGISLATION.**

In October, the House of Representatives passed H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act of 2004.¹⁵ Among other things, this bill would allow a satellite carrier to retransmit a distant signal of any station located outside of a local market if that station were classified as “significantly viewed” when the bill is enacted. Although the bill allows the Commission to change the “significantly viewed” classifications in the future, it essentially grandfathers all stations that are presently classified as “significantly viewed” under the Commission’s cable carriage rules. Thus, H.R. 4518 would allow satellite carriers offering programming to the Palm Springs

¹⁴ For instance, the Los Angeles stations do not regularly televise local news that covers the Palm Springs market.

¹⁵ The bill would extend the satellite compulsory license codified at 17 U.S.C. § 119, which otherwise will expire on December 31, 2004. The Senate has two similar bills pending for consideration – S. 2103 and S. 2644. The Senate is in recess until November 15, 2004. However, given the impending expiration of the license, the Senate is expected to pass one of these bills upon reconvening in November.

market to carry the signals of any and all of the Los Angeles stations because those stations were classified as “significantly viewed” for purposes of cable carriage in 1972.

This provision presents two problems for stations in Palm Springs, particularly low power stations. First, satellite carriers will be able to deliver to Palm Springs subscribers network-affiliated stations that serve the Los Angeles market, even though there are local network affiliates that are licensed to the Palm Springs market. If satellite carriers transmit the signal of Los Angeles network affiliates, the local Palm Springs network affiliates will lose viewers and substantial advertising revenue. Thus, these stations will lose their financial ability to offer the types of local programs and community support that are the cornerstone of the Commission’s localism policies. In addition, if satellite carriers transmit the Los Angeles network affiliates, the cable operators that have agreed not to duplicate certain programming of the Palm Springs network affiliates by airing the Los Angeles stations will have little incentive to renew these agreements on fair and reasonable terms because that would put them at a competitive disadvantage to their satellite competitors.

However, under H.R. 4518, the Commission would have the authority to revise its network non-duplication and syndicated exclusivity rules to prevent satellite carriers from airing duplicative network and syndicated programming of “significantly viewed” stations.¹⁶ Thus, if Congress adopts a version of this legislation that grandfathers the

¹⁶ See H.R. 4518, § 202 (adding new Section 340(e) to the Communications Act that provides “[s]ignals eligible to be carried under this section are not subject to the Commission’s regulations concerning network non-duplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network non-duplication or syndicated exclusivity to apply within the appropriate zone of protection”).

“significantly viewed” stations from 1972 and applies the classification scheme to satellite carriage, the Commission should consider revising its network non-duplication and syndicated exclusivity rules for both satellite and cable carriage to protect full power as well as low power stations in markets such as Palm Springs. By revising those rules to prevent satellite carriers from importing distant signals of a “significantly viewed” network-affiliated station into a market in which there is already a full power or low power network affiliate, the Commission will protect the ability of low power stations to contribute to the interests and needs of their communities and offer a diverse mix of programming.

VI. CONCLUSION

The Palm Springs market is an example of a vibrant television market that offers diverse national network-affiliated programming as well as local originated programming to serve the unique interests of the Palm Springs community. Low power stations, like KPSP, make a valuable contribution to this dynamic market. However, the Palm Springs market also demonstrates the problems that constrain low power stations from realizing their full potential of serving their local communities. Accordingly, Desert Television requests that the Commission use this proceeding to consider ways to bolster the rights afforded to low power stations, including with respect to the must carry rules, the outdated “significantly viewed” classifications in certain markets like Palm Springs, and the network non-duplication and syndicated exclusivity rules applicable to cable and satellite providers.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Bill Evans". The signature is written in black ink and is positioned above a horizontal line.

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November 1, 2004